No. 14/13/87 6Lab./126.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Parle Biscuits Private Limited, Delhi-Rohtak Road Sankhol, Bahadurgarh *versus* Daya Nand and Dilbagh.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No 329 of 1987

between

SHRI DAYA NAND C/O GENERAL SECRETARY, H. N. G MAZDOOR UNION (INTUC), BAHADURGARH, ROHTAK

.. *Workman.*

and

M/S. PARLE BISCUITS (P) LIMITED, DELHI-ROHTAK ROAD, SANKHOL, BHADURGARH (ROHTAK)

.. *Management*

Reference No. 331 of 1987.

between

SHRI DILBAGH, C/O GENERAL SECRETARY, H. N. G. MAZDOOR UNION, (INTUC). BHADURGARH (ROHTAK)

.. *Workman.*

and

M/S. PARLE BISCUITS (P) LIMITED, DELHI-ROHTAK ROAD, SANKHOL, BHADURGARH, ROHTAK

.. *Management*

Present:

Shri Bhim Sen Parbhakar, authorised representative for the workmen.

Shri M. M. Kaushal, authorised representative, for the management.

AWARD

Both these reference petitions mentioned above are the same facts and both the authorised representatives requested and argued the case in case of the arguments in Daya Nand are to be regarding Dilbagh Singh. Hence both the cases are being taken together for disposal.

2. In excercise of the powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department Endorsement No. 50667—72 and 50655—60, dated 18th December, 1987:—

> Whether the termination of services of Sarv shri Daya Nand and Dilbagh are justified and in order? If not, to what relief are they entitled?

3. The workman and the management were summoned the workman appeared and filed the claim statement that he was working with the respondent as operator till 4th April, 1987 and the last wages drawn by the applicant were Rs. 736 p. m. The respondent management dismissed the applicant in illegal and arbitary manner on 4th April, 1987 without giving any opportunity of hearing in accordance with the principle of natural justice. No notice or compensation was given to him. The applicant was an active trade union worker and the management was bent upon to fictimese and harass the applicant on account of his trade union activities and hence the applicant on account of his trade union activities was terminated. All the allegations mentioned in the dismissal order dated 4th April, 1987 are wrong and baseless and hence denied. The present termination/dismissal amounts to retrenchment which has been done by the respondent without complying of provisions of section 25-F of the Industrial Disputes Act, 1947. Which is also illegal and contrary to all the provisions of Standing Orders and Industrial Disputes Act, 1947. The applicant is unemployed since 4th April, 1987 and had got no other job inspite of his best efforts, hence prayed that

dismissal/termination order of the respondent/management against the applicant may be held illegal, arbitrary and unjustified and award may kindly be given in favour of the applicant directing reinstatement with full back wages and other benefits.

4. The management has filed the written statement that respondent firm started its manufacturing activities at Bhadurgarh in 1981-82. Initially the unit was run on small scale basis and was working in one shift only. Subsequently, with the improvement of the marketing condition, the unit was started in two shift intermittently and workers have to be kept according to the requirements in the shifts. The second shifts so started was running intermrittently on casual basis. With the passage of time the second shifts workers were absorbed when the second shift was so made regular. Accordingly the third shift was again introduced in the year 1985. Initially the third shift was also run on casual and temporary basis according to the market variabilities and when the requirement for the third shift become continuous one, the same persons who were employed on casual and temporary basis were absorbed on preferential basis. The management was providing all the facilities to its working force. Even though the unit was running in its infancy period, the management was providing all the facilities to the working force i. e. higher pay grade than what is being provided under the Minimum Wages Act, even though the respondent unit was not a schedule employment in the begining for the purpose of Minimum Wages Act.

5. To run the factory properly a settlement was executed on 5th August, 1983. This settlement was executed for maintaining cordial relations and was for a period of three years. The management provided number of facilities to the working force. Apart from it in the settlement the management has provided better working conditions and facilities to the workers even during the infancy period of its existance. The labour force employed by the management was of unskilled nature and the management had to depart technical skill upon the working force. Subsequently on 20th October, 1986, the management had executed another settlement with the working force and this settlement was also for a period of three years, but the workers still resorted to indiscipline and violance in the factory and caused breach of the spirit of the settlement in all respect. The applicant joined the services of the company as on 8th May, 1982 as a 'Helper' in the unskilled category, he was given training by the management and he was upgraded Assistant Operator grade-2 on 1st October, 1984 and his wages were revised. During the tenure of the service, the conduct of the applicant was not upto the mark. He was habitual of stopping the production or for coercing the management on one way or the other. The applicant tendered apology on 3rd December, 1985 for stopping the production during the working hours. In March, 1987, the applicant alongwith certain other workers started resorting to go slow practice. They intentionally reduced the speed of the machines whereby the machines were damaged, parts of the machines were broken and at the mixing end they intentionally damaged the checking point so as to effect the quality of the product. The applicant forcibly remained in the plant even though he was not on duty during that shift and alongwith other workers intentionally and deliberately instigated the working force in resorting to go slow practice. Supervisory staff was feeling unsafe because of the attitude of the applicant and associates in the plant. The applicant and his associates were repeatedly called in the office by the management and they were advised not to resort to such acts in the plant without any cause or reason by the applicant continued the is illegal acts. On dated 4th April, 1987 those workers committed major mis conduct of physical assault and threats and the production was reduced to nearly 20 to 30% on account of the act of the applicant. In these circumstances it was not possible to hold regular domestic enquiry. The management had to pass the dismissal order against those workmen on the basis of the facts of misconduct done by the workers. After dismissal the applicant continued to instigate and incite the workers while remaining at the factory gate and his associates against whome no action was taken. The conduct of the applicant even after the filing of the demand notice did not improve. The attitude of the applicant became indifferent after the dismissal. Top officers of the Company were also not spared. Those workers attacked the General Manager and threatened the Production Manager of dire consequences and also attacked on the other staff who reported the matter against them. A complaint was lodged to this affect with the police authorities and police people had to intervene in the affairs. The offences were criminal in nature and case was lodged and proceeded before the S. D. M., Bahadurgarh. The applicant alongwith his associates demanded an apology and give a statement thus, file was consigned. Thus conduct of the applicant is such that he is not a fit person to be kept in employment not he is entitled to any relief either on account of his past conduct and on account of his subsequent involvement in these affairs. Section 2-A of the Industrial Disputes Act, is that where employer dismiss, discharge, retrench or otherwise terminate the services of the workman indicate that there are four separate work termination and similarly under Section 2(oo) and the works retrenchment is not all in all. Therefore, the reference made by the Government regarding termination is not appropriate and the question of dismissal cannot be looked into in respect of matter in the reference. Hence the reference made under Section 2-A of the Industrial Disputes Act, 1947 in respect of termination is bad in law. Stigma has been imputed upon the applicant on account of his acts and mis-conducts committed by him. Preliminary investigation was conducted even though when a regular domestic enquiry was not conducted on account of gravity of circumstances prevalent and created at that time. The reference made to this Court was to be decided within three months and three months have already expired and accordingly the reference made by the Government stands nullidy.

6. Hence it was prayed that reference be answered in favour of the management and against the applicant holding that the reference is bad in law, not maintainable and without jurisdiction.

7. Replication was filed by the workmen is support of his case and opposing the pleas taken in the written statement and making the grounds that the management had got Standing Orders certified according to their own choice in a manupulated manner there was change in the leadership and the trade union of the workers, but this change did not find favour of the management, the management started to create a rival group in the union by giving them undue advantages and facilities with a clear motive to divide the workers strength. The present reference order is quite legal and proper, this, Court is fully competent to adjudicate of this dispute.

8. The statement of claim filed by Dilbagh Singh is that he was employed on 21st July, 1981 and had been working as operator till 4th April, 1987. The last wages drawn by him was Rs. 744. The rest facts alleging in the claim statement by Dilbagh Singh are similar as reference made by the Daya Nand. The written statement filed by the management in this case is also similary to the written statement filed by the management in the case of Daya Nand. Replication in both the case are also same in both reference concern. On the pleadings of the parties, the following issues were framed:—

(1) As per terms of reference?

(2) Whether the reference is bad in law?

(3) Whether the workman has been gainfully employed?

(4) Relief.

9. My findings on the above issues with reasons thereof are as under:—

Issue No. 1:

10. The workman has tendered his affidavit which is Ex. W-1 and he has been cross-examined by learned Authorised representative for the management. The management also tendered in his evidence affidavit of Airf Rehman, Randhir Singh, and they are cross-examined by learned Authorised representative for the workman and the management tendered documents Ex. MS-1 to Ex. MS-6 and therefore closed their evidence.

11. The question arosed before me is whether the workman who completed more than 240 days of services in a year, could be discharged, terminated, and if so to what effect. The learned Authorised representative for the workman made submission that the has been serving more than 240 days in a year, he could be retrenched in accordance with Section 25-F of the Industrial Dispute Act, and which is not done so his retrenchment amounts to illegality. For the purpose that the workman who has served for more than 240 days, no enquiry is held, whether he could dismissed or not. For this purpose my attention was drawn to 1994(1)LLN 367 in the reference between Union of India and others and R. Redappa and another where it held that if there was no material on which any reasonable person could have come to the conclusion as is envisaged in the rule then the action is vitiated due to erroneous assumption of jurisdictional fact. Therefore, the Tribunal is well within its jurisdiction to set aside the orders on this ground. The facts of this case are the railway employees working in Loco Running Staff, of different zones numbering approximately 800, were dismissed under rule 14(ii) of Railway Servents (Disciplin and Appeal) Rules for their participation in Loco Running Staff Association strike in January, 1981. In each of these cases the desciplinary authority held that it was not reasonably particable to hold any enquiry. It has been set aside by CAT both for failure to apply mind and absence af any material justifying dismissal. The Hon'ble Supreme Court had held in para No. 5 that we are not impressed by the vehement submission of the learned Additional Solicitor-General that the CAT Hyderabad, exceeded its jurisdiction in recording the finding that there was no material in support of the finding that it was not reasonably practicable to hold an enquiry. If there was no material on which any reasonable person could have come to the conclusion as is envisaged in the rule then the action was vitiated due to erroneous assumption of jurisdiction fact, therefore, the Tribunal was well within its jurisdiction to set aside the orders on this ground.

12. The learned Authorised representative for the workman made submission that this order passed by the Industrial Tribunal-cum-Labour Court has ordered that the management is bound to disclosed every facts as to how dismissed the service of the workman for which the reliance was placed-

in case between Shri Gugan Ram and Industrial Tribunal-cum Labour Court, Rohtak and another, cited in 1994-1 L. L. N. 780, holding that it should record reason after appreciation of oral and documentary evidence before passing an award-Service of workman terminated for misconduct without holding a domestic enquiry Labour Court coming to conclusion that termination was proper without discussing statement of witnesses produced by management as also without even mentioning as to what was contained in the documents placed on record by the management-Award set aside and the workman was held entitled the wages when his services were terminated.

13. On the first point whether the workman services could be terminated, attention was drawn to D. K. Yadav *versus* J. M. A. Industries Limited, cited in 1993 II CLR, 116, holding that Appellant in the employment of the respondent-Appellant overstayed leave. His service terminated without notice under standing order clause 13(2) (iv). Opportunity of hearing not given-whether termination legal held that the principals of natural justice must be read into the standing order No. 13(2) (iv) and when so read, the impugned action is violative of the principles of natural justice. My attention was also drawn to para No. 4 of judgement where it is mentioned that section 2(oo) is a comprehensive one intended to cover any action of the management to put an end to the employment of an employee for any reason whatsoever. But is further held that in para No. 7 that it is settled law that certified standing orders have statutory force which do not expressly exclude the application of the principles of natural justice. It is held in para No. 8 that the cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly.

14. The learned Authorised representative for the workman placed reliance on 1994 I CLR, 235 (Delhi) in reference between Shri Ajay Kumar *versus* Indian Railway Construction Co. Limited, holding that power of dismissal without holding enquiry is to be resorted to in exceptional and glaring cases. The power cannot be permitted to be used lightly so as to circumvent rules and dispense with services of inconvenient employees. It is further held in para No. 20 of the judgement that all the circumstances when seen collectively show that the decision to dispense with enquiry was made by the management to victimise the petitioner for his union activities and was *mala fide* and is liable to be quashed.

15. The learned Authorised representative for the workman also referred to 1994 II CLR, 1117 which is no help to the case of the workman. On the referred point the reference was made to 1994-I-CLR, 632 (Bombay) in reference between Maharashtra General Kamgar Union *versus* Anand Kamal Co-operative Housing Society Limited, & Ors. Cited in 1994-I-CLR, 634. 1994-I-CLR, 781, Surat Municipal Corporation *versus* Deinaben Vinay Kumar Shah. Om parkash *versus* State of Haryana I Ors, cited in 1991-I-CLR, 783, Bhabani Prasad Dash *versus* Arbitrator-cum-Director of Textile & Ors. cited in 1994-I-CLR, 785 management of New Delhi Tuberculosis Centre *versus* Lt. Governor of Delhi & Ors. cited in 1993 II CLR, 414 (Delhi), 1993 II CLR, 414 (Delhi).

16. The learned Authorised representative for the management has drawn my attention into 1994 Lab. I. C. 2355 (Andhra Pradesh) in case of B. Narayana *versus* District Manager A. P. S. R. T. C. and another holding that domestic enquiry found to be defective-Dismissal of employee confirmed by Labour Court on fresh evidence. If dates back to date of dismissal by management-Employee not entitled to back wages. The facts in this case are that three persons were travelling in the bus without tickets. It is held in para No. 2 of the judgement that where the dismissal of the employee is confirmed by the Labour Court on fresh evidence produced where the domestic enquiry is found to be defective, the order of dismissal confirmed by the Labour Court dates back to the date of dismissal by the management after domestic enquiry and in such cases the employees are not entitled for back wages. Where a domestic enquiry is illegal or no domestic enquiry is conducted and an employee is dismissed and the matter is carried to the Labour Court which holds that there is no enquiry and gives an opportunity to the management to adduce evidence on the basis of which order of dismissal is passed, then the order of dismissal will not back to the date of dismissal passed after domestic enquiry, but comes into force from the date of order of Labour Court. In the present case, enquiry was held to be defective and hence to the appellant is not entitled for back wages. However, since the learned single judge directed payment of 50% back wages, we do not want to interfere with the same. This was no ground that if the Court with the opinion that he has dismissed not with accordance as law and he can be reinstated but with no payment of back wages, this point will be referred after discussing the whole evidence on record.

17. The learned Authorised representative for the management also referred to the case between Raghunath Vishnu Patil and R. N. Gavande and Ors., cited in 1994 (2) LLJ, 213 (Bombay High Court)

holding that Disciplinary Enquiry Natural justice. Non supply of enquiry proceedings Evidence-Non-Supply of report based on which disciplinary enquiry was commenced Acquittal by Criminal Court-Report based on which disciplinary enquiry was initiated was not relied in enquiry and hence no prejudice is caused to the delinquent. I am of the view that this authority is not help to the case of the respondent. The reference was also made to the case between Saraohai M. Chemicals (S. M. Chemicals and Electronics) Limited, and M. S. Ajmere and another, cited in 1990 LLN (I), 70 and holding in page No. 71 that a subordinate office or employee is duty bound to obey a lawful order of a superior office. That such is the duty of a subordinate office is not required to be stated in so many worker in any list of duties. It is further held that the domestic enquiry has been properly made and the order of punishment dismissing the employee is not *mala fide*, then the Industrial Tribunal cannot interfere with the action of the management, but is also well established that the action of the management is subject to review and scrutiny where the matter is referred to the Labour Court and if the workman succeeds in showing that the order of dismissal is *mala fide* or that it was made to victimize him for his trade union activities, the order of dismissal made by the employer can be interfered with by the Labour Court.

18. The case referred in Ramanathan (C) *versus* Acting Zonal Manager, Food Corporation of India, Madras, Writ Appeal No. 121 of 1979, dated 8th August, 1979 and holding that transfer of an employee of the Food Corporation of India-Guidelines-Transfer in Viloation of guidelines. This is not applicable to the facts of this case.

19. The reference was made to Hidalco Pragatished Mazdoor Sabha Renukoot, Mirzapur of M/s. Hindustan Aluminium Limited *versus* State of U. P. through the Secretary Labour Department Council House Lucknow and others, cited in 1992 LIR, 24, holding that in para No. 3 of a judgement while he was on duty, he was given certain instructions by his Foremen but the workman refused to carry out the job. Subsequently he was asked by the Assistant Superintendent to do the said job comprising repair of the breaker of the mixer No. 1. The Assistant Superintendent tried to convince him that it was his job and he has been doing it in the past also but inspite of this the workman persisted and declined to carry out the job. Accordingly, he was chargesheeted on grounds of misconduct and the Hob'ble High Court found no merits in this petition and dismissed the petition of the workman. The reference was also made to case to the refereene decided by the Hon'ble High Court of Kerla on 20 June, 1988, which is not helpful to the case of the management.

20. The reference was also made to case between Mukhtyar Singh and Food Corporation of India & Ors. cited in 1994 (Division Bench) LLJ-II, 488, holding that if the service of a workman is allowed to get terminated by non-renewal of contract of services with him, it falls within the first part of sub-section (bb) of clause (oo) of Sec. 2 of the Act, and it the service is terminated and if the service is terminated acting under a stipulation in that behalf contained in the contract, it falls within the second part of that sub-clause and both cases falling within the excepted categories are not retrenchment. It is further held in para 3 of the order that no enquiry was held regarding any allegations against him, nor he was given any opportunity of giving an explanation. The termination order was penal in nature and against Service Rule of The Food Corporation of India. It is also held in the judgement in reference between the case of workman of M/s. Fire Stone. Tyre and Rubber Co. (supra) are pertinent (p. 297) (but there is no provision either in this statute) (meaning thereby Inoustrial Employment (Standing Orders) Act, 1946) or in the Act (meaning thereby Industrial Disputes Act, 1947) which states that an order of dismissal or discharge is illegal if it is not proceeded by a proper and valid domestic enquiry?

21. The learned Authorised representative for the workman made submission that there was no enquiry against the workman before termination. If the opportunity was not granted to the applicant was to join the duties. A criminal case registered against the workman and the workman were therin acquitted by the criminal Court. The submission was based on chargesheet Ex. W-1/2. The chargesheet Ex. W-1/2 which was against the workman that they investigated other workers of the factory that they would have face to serious consequeces, despite by the advice by the senior officer of the factory, they should go out side the factory but you were not to be on the working on the machinery and had said that they could not turn them out, they had lower down the machines speed, the allegation of which was production became less and you had disobeyed the orders of the senior officers on 4th April, 1987 you were doing this act and the whole atmosphere became terified and as such the factory had dismissed the services of the workman.

22. The learned Authorised representative for the workman also referred the letter Ex. WW-1/3 to Daya Nand and others shown that said orders cannot be supplied by the management and thus proper

machinery provided for the said purpose by the avthority constituted under the Industrial Employment Standing Orders Act, 1946 has been complied with.

23. On the other hand the learned authorised representative for the management referred to settlement between the workman and the management which is embodied in Ex. M-1. Ex. M-2 is chart showing the working of the factory on 2nd March, 1987 to 31st March, 1987. It is apparent from the chart that the work of the factory on 2nd March, 1987 was 2225 on 3rd it was 2103 and regarding workers working in the factory premises and shown in column No. A. The works shown in Column No. 3 shows that working production in the factory was 14067 in Bonded Store Room on 1st April, 1987 and 2nd April, 1987 it was as 9910, on 3rd April, 1987 it was of 13825, on 4th April, 1987 it was of the order of 1217, on 6th April, 1987 it was 1243, on 7th April, 1987 it was of 2443, on 8th April, 1987 it was order ot the 1268 and 9th April, 1987 it was the order of 978.

24. Ex. M-6 is photostat copy of the letter by J. M. Sharma General Manager to the City I/C, Bhadurgarh that he was stopped forceebly near Badaro and two dismissed persons from the company, namely Balram S/o Shri Khazan Singh and Satbir Singh son of Shri Subhey Singh smashed the window panes of his car. Ex. M-8 is the photostate copy of the complaint sent by Shri R. S. Shekhwat to S. H.O., Bhadurgarh that the work has been resume out few of workers at Sr. No. 1, 2, 3, 4, 7, 9, those who have been taking active part in illegal activities of Go-Slow sabotaging have been dismissed. Ex. M-9 is photostate copy of the letter from R. S. Sekhwat Ad. Manager to Deputy Labour Commissioner informing that the strike still continues. Ex. 10 to M-18 are the photostat copies of the letters sent by R. S. Sekhawat to D. L. C. informing that strike still continued, these letters were sent on to 6th May, 198/ to 15th May, 1987. Same type of letter is written to Sardar Kulwant Singh which Ex. M-19 to M-24 that the strike still continues. Ex. M-25 and M-26 are the letters sent by the management to Kulwant Singh, Secretary, Labour and Employment departments. Ex. M-27 to M-35 are the photo stat copies of telegrame showing that the strike still continues. Ex. M-36 is the photostate copy sent by R. S. Sekhwat to S. H. O., Bhadurgarh that some of the union workers and representatives are creating nuisance in the plant whereby tempering the Biscuit machines and the production has gone down.

24-A It is proved from the evidence that the production in the factory has go-down in the month of March, 1987 when the alleged shift said to have occured and it is proved so from Ex. M-3. It is also proved from Ex. M-2 and that in the month of June the same order the production was into quantity of more than 6000, whereas in the month of April, 1987 the quantity of the manufacturing biscuits raised from 1992 to 9075. It is also proved from Ex. M-3 that 1st April, 1987 opening balance was 978. Secondly the management has got registered a case against the workmen in the Police Station, Bhadurgarh allegating that because of the mischieveness of the workers the production of biscuits has been very much lowdown. The photostate copy of the F. I. R. which is Ex. M-5, proves that workers were wanting to destroy the property of Parle Biscuits. No name is mentioned in the F.I.R. So it shall be wrong to say as the name of the workmen doesnot occur in the F. I. R. that they are have not taken any action in the destruction of the property of the respondent Company.

24-B It is as such proved that the work and conduct of the had always been bad as they were always in the fighting mood with the official and officers of the factory and they were not allowed in working to save from loss of the factory. Now the question is whether the services of the workmen could be dispensed with the manner adopted by the management because the workman had worked for more than 240 days in 12 calender months. It is admitted fact that the management had not served the workmen with the notice of retrenchment and paying them notice pay or retrenchment compensation.

25. The learned Authorised representative for the management made the sumission that it is allowed by the Standing Orders and by Industrial Disputes Act. The Standing orders inrespect of M/s. Parley Biscuits Private Limited Bhadurgarh passed on 20th January, 1984. The learned Authorised representative for the management referred to clause 8, 14, 19, 23, 24, 25, 26 of Standing Orders. I have gone through every clause giving in the Standing Orders. Clause 8 is not having any application to facts of this case. Clause 14 is that all workman shall be at work in the shift it the time fixed and notified; (b) A workman not at his work place within 5 minutes of the starting time: (c) If the workman's latenese in attending exceeds 10 minutes without any satisfactory reason, he may not be premitted to entre his department and/or to commence work; (d) is an employee, who after clocking in presenting attendance card, is found absent from his proper place or places of working during working hours without permission of sectional officer/Supervisors or without sufficient reason shall be treated as absent for whole day; (e) A working participating in a strike which is illegal under the Industrial Disputes Act, or in Contravention of any law shall be deemed to be absent from duty; (f), (g) & (h) ————————.

It is as such made out that as the workman were resorted illegal strike they should not to be marked present in the office but they were present in the factory and they should be paid, but when the workmen were participated in illegal strike thus claiming wages, it amounts to act not warranted by Standing Orders.

26. Clause 19 is regarding termination of employment (A) is that service of the permanent workman may be terminated by giving him one month's notice in writing or notice pay, the service of of the permanent workman may be terminated on reaching the age of superannuation i.e. 58 years; (ii) the service of any probationer may be terminated at any time during probation****; (iii) the service of the temporary and casual workman or apprentice worker may be terminated at any time without assigning any reason and without any notice, subject to provision of any law, for the time being in force; (iv) Any permanent workman may leave the service of the company****; (v) Any probationer****; (vi) An apprentice can leave the company****.

27. Now the learned Authorised representative for the management referred sub-clause (iii) of clause 19. As the workmen were employed as casual workman, their services could be terminated but subject to the provisions of any law, for the time being in force. The provisions under the Industrial Disputes Act, if made applicable services of the workman could not be terminated being no in accordance with Section 25-F of the Industrial Disputes Act.

28. Clause 23 is regarding minor offence and which given such offence as for example minor negligence or neglect of work, acts of commission for which a find may be imposed under the payment of wages Act, minor damage to machinery, minor damage or wastage of materials and stores, ordinary absence, leaving the station without permission, lateness, minor inefficiency, loitering and other offences unless not otherwise specially provided for will be deemed as minor offences. Each such act or ommission constitutes minor offences and is liable for punishment prescribed.

29. The learned Authorised representative for the workman applicant made contention that the person have been participated in strike or the work done was down then what work was going of prior to it of after it the workmen can be said to commit minor offences and for which maximum fine is not termination of services of the workman. The learned authorised representative for the management made submission that as the workman was involved in major offences which are given in clause 25 and which gives the instant of major offences as drunkness, fighting, riotous or disorderly or indecent behaviour within the factory premises and or while on duty on outside in connection with the affairs of the factory. It is also given in clause 25 (8) that anywhere within the limits of the factory commiting or inciting other to commit breaches of law or rules of the Company or the commission of any other act intended to harm the interest of the company or its employees and/or women. Sub-clause (9) is that if the act cause mental and or physical pain or injury to other employees and for workmen. Sub-clause (11) is committing any act likely to harm or and damage to the company's plant or property or likely to therefore with his production and/or carrying capacity or that of any other employees and workmen. Sub-clause (12) is regarding engaging in or inciting others to engage in illegal strikes or slowdown or union activities within the factory. Sub-clause (25) is regarding creating disturbence or confusion or agitation of any nature whatsoever in the factory and interferring with or stopping his own or another's work for any reason or by any manner, whatsoever. Sub-clause (37) is regarding agitate or instigate the workman for breach of any rules, agreement or award having force of law. Sub-clause (39) is taking part or participating in strike which is illegal or is in contravention or any law. The learned Authorised representative for the management thus made submission that as the Standing Orders have made Rules regarding committing of peace that the working of the factory or causing loss to factory machinary or not allowing that the workers to do the work which was done by the workmen and hence such rules are fully application and the workmen have been rightly terminated.

30. The learned Authorised representative for the management has referred to Section 2-A of the Industrial Disputes Act, 1947 which defines where any employer discharges, dismisses, retrenches or otherwise terminates the service of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharges, dismissal, retrenchment or termination shall be deemed to be an industrial dispute not with standing that no other workman nor any union of workmen is a party to the party to the dispute.

31. The learned Authorised representative for the management thus made the submission that Section 2-A of the Industrial Disputes Act, has laid down that any workman could be terminated from the service, dismissed of services without holding of enquiry, so as to retrenched him. It means that any person could be removed from job for the reasons given as the workman are proved to be mischievous persons causing damage to the factory and causing loss to the factory machines and it is proved from Ex. M-2 and from evidence examined by the management that how the workmen had been instigated other workmen not to work. It is proved from Ex. M-2 that production of the management was lower down because of the activities of the workmen. It is proved from Ex. M-2 that because of the activity of the workmen the business was of 365 to 370, 340 in the month of 3rd April, 1987, and on 21st April, 1987, 475, 455, 54, 547, in the month of 6th April, 1987 9th April, 1987 and 6th April, 1987 respectively.

32. It is proved that the workman had been of causing damage to the factory and production. The management had terminated the services as envisaged in Section 2-A of the Industrial Disputes Act. As such I decide this issue against the workmen and in favour of the management.

Issue No. 2 and 3:

33. All these issues are not pressed or argued by the parties. Hence I decide both these issues against the management.

Issue No. 4 (Relief) :

34. In view of my findings on the above issues I dismiss the reference/petitions and claimstatements filed by the workmen/applicants. The reference is answered and returned accordingly. However, the parties are left to bear their own costs. The copy of the award be placed on the other reference.

Dated 11th January, 1995.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court, Rohtak.

Endorsement No. 329—331/87/55, dated the 13th January, 1995.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employmet Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court, Rohtak.

No. **14/13/87-6Lab/147.**—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Secretary, H.S.E.B., Panchkula *versus* Sh. Baldev Raj.

IN THE COURT OF SHRI S. R. BANSAL, ADDITIONAL DISTRICT & SESSIONS JUDGE, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 308 of 1989

SHRI BALDEV RAJ, SON OF SHRI GIRDHARI LAL, VILLAGE ISHMAILABAD, TEHSIL THANESAR (KURUKSHRTRA) .. *Workman*

and

(1) SECRETARY, HARYANA STATE ELECTRICITY BOARD, PANCHKULA

(2) SUB-DIVISIONAL OFFICER, OPERATION, HARYANA STATE ELECTRICITY BOARD, PANCHKULA

(3) EXECUTIVE ENGINEER, OPERATION ISHMAILABAD, HARYANA STATE ELECTRICITY BOARD, SHAHBAD MARKANDA .. *Management*

Present :
Shri M. S. Goel

Shri D. R. Batra

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act', the Governor of Haryana referred the following dispute between the workman Shri Baldev Raj and the management (1) Secretary, Haryana State Electricty Board, Panchkula (2) Sub-Divisional Officer (operation) Haryana State Electricity Board, Panchkula ; and (3) Executive Engineer, Operation Ishmailabad, Haryana State Electricity Board, Shahabad Markanda to this Court for adjudication ,—*vide* Haryana Government notification bearing No. 35037, dated 9th August, 1989 :—

"Whether the services of Baldev Raj has been terminated or he himself abandoned the job by absenteeism? If so, to what relief is he entitled?"

The workman raised an Industrial dispute by serving a demand notice dated 8th April, 1989 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed, the appropriate Government made by above mentioned reference to this court.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and stated that his demand notice may be treated as his claim statement. The stand of the workman in the demand notice/claim statement is that he served with the management as a Labour from 29th October, 1979 to 7th December, 1984 as daily wages basis and renders more than 240 days of service in a calendar and his services were terminated without giving him prior notice or payment of retrenchment-compensation. The workman demanded his reinstatement with continuity of service and back wages.

The stand of the management in the written reply filed is that the reference is not maintainable and bad for mis-joinder of parties. It was pleaded that the services of the workman were never terminated. He voluntarily left and abandoned his job of his own accord and without any notice and he was marked absent in the muster roll and lateron he was shown to have left the job. It was pleaded that the demand notice has been served at a belated stage. The claim of the workman is liable to be rejected.

The workman submitted replication controverting the allegations of the written statement filed and reitating those made in the claim statement. Shri. S. D. Anand one of my learned predecessor,—*vide* his order dated 5th June, 1990 settled the under mentioned issues for decision :—

(1) Whether services of the workman were terminated or he relinquished the lien by absence? OPP

(2) If issue No. 1 is proved in favour of the workman whether impugned termination of services of the workman is invalid? OPW

(3) Whether the reference is not maintainable for the reasons stated in para No. 1 & 2 of the WS? OPM

(4) Relief.

Parties led evidence. I have heard the rerpresentatives of the parties. My issuewise findings are as under :—

Issue No. 1 & 2

Both these issues are inter-linked and are being taken up together.

In support of his case Shri Baldev Raj. workman appeared as WW-1 and stated that he served the management as daily wages from 29th October, 1979 to 7th December, 1984 when his services were terminated without notice, chargesheet, enquiry or payment of retrenchment compensation. He also stated that he had been meeting the officers and had been representing to them for his reinstatement but they did not pay any heed. He also stated that his juniors have been retained and fresh persons have been recruited. He demanded his reinstatement with continuity of service and back wages. He also examined Shri Baldev Lal a co-worker who stated that the workman never absented from duty and that his services were terminated without any notice, chargesheet or payment of retrenchment compensation. He also stated that the workman had been visting the officers for his reinstatement but the junior engineer had been putting up the matter in one pretext or the other. In rebuttal the management examined MW-1 Shri Jai Bhagwan UDC who proved Ex. M-1 copy of muster-roll in which the workman's name finds mentioned at Sr. No. 8. Its persual shows that the workman has been shown present upto 7th December, 1984 and thereafter shown absent upto 19th December, 1984 and after 19th December, 1984 he has been shows as having left the job. Mr. M. S. Goel, learned representative of the workman has cited Municipal Corporation of Delhi *versus* Sukhvir Singh 1994 (4) SCT-98 to argu that if the workman had abandoned the employment certainly should have been held against him put no such enquiry was conducted and thereafter this plea of management cannot be accepted.

I have gone through the facts of the reported case. The plea raised in the reported judgement is that as to whether the workman was employed for a limited period. The Hon'ble Delhi High Court observed that the workman was not employed for a specific period. The question of enquiry regarding abandonment of service is not a ratio of this judgement. In such a situation the observations made are of no help to this case.

This belongs me to the next question as to what is the legal effect of delayed demand notice after a period of about more than five years. The alleged termination took place on 7th December, 1984 and

the demand notice of the present reference was arose on 3rd April, 1989. *It was held in Punjab State* Electricity Board *versds* State of Punjab-1993(1)-SCT 103 as under :—

> "Industrial Disputes Act, 1947. section 10-Reference/delayed demand notice Delay can be fatal to the claim under section 10 of the Industrial Disputes Act *even if it is held that* the termination was bad in law. The general law provided three years limitation for setting up a claim in the court, the workman cannot be put *on a higher pedestal. The* management has to suffer adverse consequences while facing delayed claims-delayed claim has to be rejected."

The ratio of this authority is fully applicable to the facts of the present case and *it is accordingly* held that the workman is not entitled to any relief. On the basis of the circumstances adduced on the file it is thus quite evident that the services of the workman were never terminated. On *the other hand the workman* voluntarily abandoned his job. In any case the claim of the workman is barred due to delay and laches. He is not entitled to any relief. The findings on both these issues are, therefore, returned *against the* workman and in favour of the management.

Issue No. 3

The onus to prove this issue was not the management. The management has not proved this issue nor was it argued. The finding on this issue is, therefore returned *against the management.*

Relief.

In the end, it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly..

S. R. BANSAL,

The 29th December, 1995.

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endorsement No. 1986, dated Ambala City, the 30th December, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

No. 14/13/87-6Lab/150.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, *Industrial Tribunal-cum-Labour Court*, Ambala in respect of the dispute between the workman and the management of M/s M. D., HSMITC, Chandigarh *versus* Sh. Prem Chand:—

IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT & SESSION JUDGE), PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 60 of 89

WORKMAN SHRI PREM CHAND SON OF SHRI ATMA RAM, VILLAGE RAM NAGAR, P. O. UGALA, TEHSIL AND DISTRICT AMBALA

versus

AND THE MANAGEMENT M. D. HARYANA STATE MINOR IRRIGATION TUBEWELL CORPORATION, CHANDIGARH

and

EXECUTIVE ENGINEER, HARYANA STATE MINOR IRRIGATION TUBEWLEL CORPORATION, LINING DIVISION, PEHOWA (KURUKSETRA).

Present :

WR. Shri Sham Sunder.

MR. Shri P. S. Sharma.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Prem Chand and the management, Managing Director of Haryana State Minor Irrigation Tubewell Corporation, Chandigarh and Executive Engineer, Haryana State Minor Irrigation Tubewell Corporation, Lining Division, Pehowa (Kurukshehtra) to this court for adjudication,—*vide* Haryana Government notification bearing No. 1175—80, dated 6th January, 1989 :—

Whether the termination of the services of Shri Prem Chand is valid and justified? If not so, to what relief is he entitled?

The workman raised an industrial dispute by serving a demand notice dated 22nd April, 1988 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed the appropriate government made the above-mentioned reference to this court.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and state that his demand notice may be treated as his claim statement. The stand of the workman in the demand notice/claim statement is that he enjoined the service of the management as a mate in Sub-Division, Kurukshetra on 1st April, 1985 and was subsequently transferred in Sub-Division. Pehowa. Later on his services were abruptly terminated on 31st May, 1986. It is his case that he had rendered more than 240 days of service in a calendar year and his termination was ordered without complying with provisions of section 25-F of the Act. His termination of illegal and unwarranted and therefore he demanded his reinstatement with continuity of service and back wages.

The management in the written statement filed admitted that the workman worked for the period from 1st April, 1985 to 30th May, 1986. It was however pleaded that he was habitual to remain absent from duty and he remained as such from 1st May, 1986 to 30th May, 1986, 11th May, 1986 and 29th May, 1986 to 31st May, 1986 without any intimation. It was pleaded that his services were never terminated and he remained absent from 29th May, 1986 and came only to collect his pay on 16th June, 1986. It was however admitted that the workman had completed 240 days. The management pleaded the rejection of the claim.

The workman submitted replication controverting the allegations of the management in the written statement filed and reiterated the assertions of the demand notice/ claim statement. On the rival contentions of the parties the following points in issues were laid down for decision :—

(1) Whether the impugned termination of services of workman is illegal? PW

(2) Relief.

Parties led evidence. I have heard the learned representatives of the parties. My issuewise findings are as under :—

Issue No. 1:

Shri Prem Chand, workman appeared as WW-1 and stated that he served with the management continuously from 1st April, 1985 to 31st May, 1986 as mate. He also stated that he never remained absent and also stated that after 31st May, 1986 as well he went to the officers many a times and requested them to employ him but they did not agree. He also stated that at the time of his termination no prior notice was given nor any retrenchment compensation was paid. He demanded his reinstatement with continuity of service and back wages. During cross-examination a suggestion was put to the workman that he left the job due to less wages. This was not pleaded by the management in the written statement filed. It is well settled that no amount of evidence can be looked into a plea which was never raised in the pleadings. Moreover there is a variance between pleading and the proof. It was admitted by MW-1 Shri R.K. Sharma, S.D.O. that the workman had rendered more than 240 days of service continuously. This witness did not bring any muster roll and made statement in the court without any record. He was directed to bring muster-roll and attendance reigster. He admitted during cross-examination that prior to 11th January, 1992 he (witness) was posted at Bhiwani. He could not deny that one Dharmvir has been appointed in place of the workman. It is admitted case that no prior notice was given nor any retrenchment compensation was paid. From the above mentioned evidence the management has failed to prove that the workman absented from duty. The muster-roll for the period subsequent to 31st May, 1986 was not produced. Under these circumstances it is quite evident that the services of workman were terminated without giving him any notice or payment of retrenchment compensation. The termination is, therefore, illegal. and the workman is entitled to reinstatement with continuity of service. Although the workman has demanded his back wages

yet the fact remains that he served the demand notice after a period of about two years of his termination. The delay is quite inordinate. The workman can not be allowed full back wages. He will only be entitled to 50% of the wages from the date of demand notice. The finding on this issue shall stand returned in favour of workman and against the management.

Relief:

In the end, it is held that the workman is entitled to reinstatement with continuity of service and 50% of the back wages from the date of demand notice.

The reference shall stand answered accordingly.

S. R. BANSAL,

The 13th December, 1994

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endorsement No. 1972, dated the 30th December, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

No. 14/13/87-6Lab./159.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s. Programme Officer, ICDS, Cell, Ambala City *versus* Sh. Dhani Ram.

IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT SESSIONS JUDGE), PRESIDING OFFICER, LABOUR COURT, AMBLA

Reference No. 218 of 89

SHRI DHANI RAM, SON OF SHRI BASANTA RAM, THROUGH BHARTIYA MAZDOOR SANGH, 61 C, KAILASH NAGAR, MODEL TOWN AMBALA CITY .. *Workman*

and

THE PROGRAMME OFFICER I. C. D. S CELL (ANGANWARI) NEW D.E.O. OFFICE AMBALA CITY .. *Management*

Present :

WR Shri B. R. Prabhakar.

MR Shri Jagmal Singh A.D.A.

AWARD

In exercise of the powers conferred by clause (c) of sub section 1 of secton 10 of the Industrial Disputeds Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Dhani Ram and the management Programme Officer, I. C. D. S. Cell, (Anganwari) N w D. E. O. Office, Ambala City to this Court for adjudication,—*vide* Haryana Government notification bearing no. 23409—14 dated 2nd June, 1989 :—

> Whether the termination of the services of Shri Dhani Ram is valid and justified? If not so, to what relief is he entitled?

The workman raise an industrial dispute by serving a demand notice dated 28th February, 1989 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. But the same did not produce the desired result thereby necessitating the making of the present reference by the appropriate Government.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and submitted his claim statement dated 6th October, 1989. It was alleged that he was employed as jeep driver under Child Development Officer, Naraingarh on 16th November, 1987

having been sponsored by employment exchange, Ambala and his services were terminated on 17th November, 1988 without assigning any reason. It is also alleged that post was filled by recruiting a new person. The workman demanded his reinstatement with [illegible] of service and back wages.

The management in the return filed stated that the workman was engaged from 16th November, 1987 to 23rd August, 1988 and again from 1st September, 1988 to 12th November, 1988 but he was relieved from the job as per terms and conditions of his appointment letter as his services could be terminated at any time without assigning any reason. It was also pleaded that one Suri Jagdish Chander, driver was appointed as driver in the regular scale in place of the workman and the management was thus left no alternative to terminate the services of the workman.

The workman submitted replication controverting the allegations of the management and reiterating those made in the claim statement. On the rival contentions of the parties the following points in issues were laid down for decisions :--

(1) Whether the impugned termination of services of the workman is invalid? OPW
(2) Whether this court has not jurisdiction to try reference? OPM
(3) Whether the reference is bad due to non-joinder and misjoinder of necessary parties? OPM
(4) Whether the reference is time barred? OPM
(5) Relief.

Parties led evidence. I have heard the representatives of the parties. My issuewise finding are as under :--

Issue No. 1 :

The workman appeared as WW-1 and supported all the allegations of the claim statement. The management examined MW-1 Rajni Pashija. Programme Officer who produced letter dated 9th November, 1987. from Director, Social Welfare Haryana Ex. M-1, Ex. M-2 copy of the appointment letter dated 13th Nobemver, 1987 Ex. M-3 copy of his joining report. Ex M-4 copy of the termination order dated 23rd August, 1988, Ex. M-5 copy of fresh appointment letter dated 30th August, 1988 Ex. M-6 copy of appointment letter of Jagidish Chander in place of the workman and Ex. M-7 is copy of termination order dated 17th November, 1988.

Ex. M-2 and Ex. M-5 clearly stipulate that the services of the workman could be terminated at any time without any notice or reason. This question came up for consideration recently in Civil Writ Petition No. 8906 of 1989 Asha Rani *versus* State of Haryana-1993-SCT-11 and his Lordship Mr. Justice J. L. Gupta clearly rule that where the services of an employee has been terminated in confirmity with the terms of appointment. It does not cast any stiema and such a termination order can not be called in question. This authority applies for all the four corners to the facts of the present case. The impugned termination order was passed in confirmity with the terms and conditions of the appointment letter where in it was clearly stipulated that the services of the workman could be terminated at any time without any reason or notice. The impugned order, is therefore beyond the scope of judicial scrutiny and can not be attracted on the ground that the same has been passed in violation of section 25-F of the Industrial Disputes Act, 1947. The findings on this issue is therefore returned against the workman and in favour of the management.

Issue No. 2 to 4

The onus to prove on these issues was on the management. The management as however failed to prove any of these issues. The findings or these issues shall therefore, stand returned against the management and in favour of the workman.

Relief :

In the end, it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly.

S. R. BANSAL,

The 9th December, 1994

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endorsement No. 1971, dated the 30th December, 1994.

Forwarded (four copies), to the Financial Commissioner and Secretary to Government of Haryana Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.